



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 7 May 2013

Session 4

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JUSTICE COMMITTEE
14th Meeting 2013, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Colin Keir (Edinburgh Western) (SNP)

*Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Cross (University of Dundee)

Margaret Dekker (Scotland's Campaign against Irresponsible Drivers)

David Green (Crown Office and Procurator Fiscal Service)

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)

Stephen McGowan (Crown Office and Procurator Fiscal Service)

Superintendent Iain Murray (Police Scotland)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 7 May 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the Justice Committee's 14th meeting in 2013. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system, even when they are switched to silent. Apologies have been received from David McLetchie; John Lamont is attending as his substitute.

Agenda item 1 is a decision on taking business in private. I propose that we take item 4 in private, as it involves consideration of potential witnesses for our follow-up round-table evidence session on prison healthcare, which is due to take place on 28 May. Do members agree that we should take item 4 in private?

Members *indicated agreement.*

Fatal Road Collisions

10:00

The Convener: Agenda item 2 is fatal road collisions. Our evidence session follows the publication of a report by researchers from the University of Dundee entitled "Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision". Scotland's Campaign against Irresponsible Drivers wrote to ask us to consider that report. Over the past few months, we have therefore been in correspondence with the campaign and the other witnesses on the report's recommendations. We also thought that it would be timely to consider the issue now because we are dealing with the Victims and Witnesses (Scotland) Bill, and there may be scope for placing something in that bill, although I make no promises. That is also a consideration for the committee.

I welcome to the meeting Stuart Cross, who is senior lecturer at Dundee law school at the University of Dundee; Margaret Dekker, who is from Scotland's Campaign Against Irresponsible Drivers—I think that I first came across Mrs Dekker in 1999 at the Public Petitions Committee; Superintendent Iain Murray, who is head of road policing, Police Scotland; Stephen McGowan, who is deputy director of serious casework at the Crown Office and Procurator Fiscal Service; and David Green, who is head of the Scottish fatalities investigation unit at the Crown Office and Procurator Fiscal Service. I thank them very much for their attendance.

If a question is specifically directed at a witness, they will, of course, answer it, but if a witness wishes to answer a question that has not been specifically directed at them, they should simply indicate to me, and they can come in. I hope for some interaction between the witnesses once questions have been posed.

Jenny Marra (North East Scotland) (Lab): Good morning, panel.

The University of Dundee/SCID report recommends a statutory right for families to access police reports and investigation reports after fatal accidents. I put my questions to Margaret Dekker and Stuart Cross. Why is that necessary? Why is the current system not sufficient?

Margaret Dekker (Scotland's Campaign against Irresponsible Drivers): I thank the committee for inviting us here.

Road casualties are indiscriminate, and we are all, as road users, at risk. A road death is not an ordinary death; it is sudden, premature and

violent. According to the World Health Organization, such deaths are all the more acute because the overwhelming number of victims are healthy prior to the crash.

Families that are bereaved by road crashes need to know that they can access information and documents, if they wish to do so. Having access to the investigation documents empowers bereaved families to work through the finality of a death.

The procurator fiscal acts in the public interest, but many victims' families feel isolated from the process of law—they feel that they are no longer part of the public. A bereaved mother recently said to me that procurators fiscal assume to do the thinking for them instead of telling them up front what information they can get and how they can get it. Bereaved families have the right to know what information has been gathered in the course of an investigation into their loved one's death so that they can access it if they wish to do so. The information that they seek is not about state secrets, drug barons or the like; they are asking only for documents from the investigation into their loved one's death. There must be transparency so that bereaved families can work through the grieving process.

Stuart Cross (University of Dundee): I think that Margaret Dekker will elaborate further in due course on why she sees issues with the current system. I offer two comments on the possibility of including a right in legislation. First, such a right would give pre-eminence to the status of families of road accident victims as victims—it would clearly identify families and survivors as victims. Secondly, it would provide the opportunity to change the balance in relation to discretion.

At present, other parties have discretion regarding the disclosure of some of the information to which Margaret Dekker referred. There is a coherent argument that the balance in relation to discretion should lie with the victims, as they have the greatest interest in accessing that information.

The Convener: Does anyone else on the panel wish to comment at this stage?

Stephen McGowan (Crown Office and Procurator Fiscal Service): With regard to the Crown Office's discretion in giving out information, we do our best to give the nearest relatives access to information where we can. The discretion that we exercise, on which our guidance is clear, allows that we should give that information to nearest relatives. The only reason why we would not give that material to them is to preserve the right to a fair trial. Discretion is exercised in that sense, rather than in the sense of keeping the information from the nearest relatives.

David Green (Crown Office and Procurator Fiscal Service): It is worth noting that those documents and all that information would be given to the family at the conclusion of the criminal proceedings, when there was no longer an issue with preserving the criminal case. Our presumption is that all documents will be handed over on request.

The Convener: Mrs Dekker, do you want to come back in?

Margaret Dekker: The committee may be aware of the situation in which the family of John Lacon find themselves. The criminal proceedings finished in October 2012, and the family are still seeking the documents.

The Convener: I do not know whether anyone can comment on that specific case just now, but we can certainly expect a reply at some point.

Stephen McGowan: I would not like to comment on that specific case, but if there is an particular issue with a case I will take that information away from today's meeting and we will do what we can to resolve it.

Margaret Dekker: The mother of Craig Newton, a cyclist, was reported last month as saying that two years have passed and all she knows is that her son was killed by a bin lorry, and that she needs answers.

The Convener: We have those two cases on the record. I ask Margaret Dekker to provide the committee as well as the other witnesses with details of other families who have requested information and are still waiting, as that would be helpful.

I will let Mrs Dekker back in so that we can get the facts first.

Margaret Dekker: The family of 17-year-old Christopher Durrand, who was killed in 2012, asked for the investigation documents through freedom of information legislation. They thought that the documents would be free, but Northern Constabulary told them that the Association of Chief Police Officers in Scotland charges for such information and that the cost would be substantial. The family are now making an official complaint as they were charged £500 for the police report.

The Convener: Those cases are now on the record. If you have more examples, please let the committee know about them. The officials will investigate to find out what the position is and the committee will look at that too. There appear to be issues—I will just say "appear to be" at the moment.

Jenny Marra: Mrs Dekker, you raised those three cases, and the convener is suggesting that the officials will get back to you on the specifics.

Are you raising those cases to highlight that what Mr McGowan says about the documents being available after the criminal proceedings have finished is not in reality the case for a lot of families, who are not getting ready access to those documents or are being told that they must pay substantial amounts of money for them?

Margaret Dekker: I understand the difficult position of the procurator fiscal in dealing with families, but the Crown Office book of regulations uses airy-fairy language—"it is likely", "it may" and "should the families request copies".

We commissioned the University of Dundee law school report to identify best practice so that the families of victims can access information that they want in a timely manner.

The Convener: Mr Green, do you wish to comment? You made a partly sweeping statement that people can get everything at the end of criminal proceedings.

Stephen McGowan: I will come in if I may, convener. We will give the information at the end of the criminal proceedings. I wonder whether we have a job to do in explaining what our process is now in comparison with what it was a few years ago, as some of those cases are older. I wonder whether we need to be a bit more proactive in giving information.

The Convener: I think that Mrs Dekker mentioned a case from 2012—that is not old.

Margaret Dekker: I mentioned cases from 2012 and 2013.

Stephen McGowan: In terms of our evolving process, some of those cases are older. The guidance that has been referred to is guidance to the Scottish fatalities investigation unit, which is David Green's unit. All road traffic fatalities are dealt with by that unit, which applies the guidance consistently. I take the point that reference has been made to 2012 cases. From 1 April 2012 all new cases of fatalities that come into the SFIU are dealt with by the team, who meet the nearest relatives and tell them what information is available. It seems that we may have a job to do to beef up the guidance on what our own staff should do to explain what is available.

We are also aware that the guidance that we put out publicly on the internet needs to be improved. Our old website was 10 years old and the information we could put on it was limited. We have a new website now and one of our principles is that, rather than identify what we want to tell people, we ask people what they want us to tell them. We go to victims groups and groups that have an interest, including SCID, to ask what information we should be publicising more widely so that people can find it more easily.

Margaret Dekker: Would it not be better for the Crown Office and Procurator Fiscal Service to tell families proactively at meetings what information is gathered during an investigation and when they can access it, rather than leave that to websites? In their grief, lots of families have no idea how to go about things.

The Convener: There is a section in the Victims and Witnesses (Scotland) Bill about witnesses and victims being actively involved in the investigation. I say to both Mrs Dekker and Mr Cross that we should look at the bill to see whether it can be tightened up in other ways. I am not saying that you just need to talk about that issue, but that more can be done to help specifically in relation to the bill.

Margaret Dekker: I believe that that is in section 3.

Victim Support Scotland is also asking that information be given proactively to families.

The Convener: Yes—so there is some scope for increasing provision in the bill, if we wish to look at that.

Graeme Pearson (South Scotland) (Lab): My question is for Mr Cross. In your report, you indicate that a conflict of interest arises from time to time in relation to the enforcement and reporting agencies involved. Can you explain that conflict of interests?

Stuart Cross: I can give you a little bit of background from the literature that we have, which I hope will give some guidance. The report refers to the potential for a conflict of interest; it does not indicate that there would definitively be such a conflict—by no stretch of the imagination are we asserting that. We identified reports from Europe—in particular from the European Transport Safety Council—which comment on the applicability of different roles and it being best practice to avoid any potential for conflict. The council said:

"A key issue in any accident investigation is the status and impartiality of the body carrying out the inquiry. Any organisation with an actual, or perceived, vested interest in the result is rarely able to act with total impartiality. The European Union must insist that organisations undertaking transport accident investigation are totally independent ... as is clearly stated in Council Directive (94/56/EC)".

The issue is one of focus. For the Crown Office and Procurator Fiscal Service, the absolute priority is deciding culpability and blame—whether there is any potential criminal liability. A secondary issue is the focus on road safety and investigation.

A supplementary point concerns the effectiveness of independent bodies, in that separating the focus can remove any potential suggestion of conflict. One body can focus on the

culpability issue and another body can look at the road safety issues.

Graeme Pearson: As part of the process of writing your report, did you consider the situation in Scotland, and did you identify evidence of conflict that was important enough that you thought that you should include it in your report?

Stuart Cross: No, we did not. I should explain the methodology. We were approached by SCID expressly to identify best practice in other jurisdictions. SCID had already commissioned research into existing processes. There was a limited budget and a short timescale, and the work was narrowly focused.

10:15

Graeme Pearson: If they feel able to, could the witnesses from the Procurator Fiscal Service and the police respond?

The Convener: I am waiting for them to nominate themselves. We have been told that there might be a conflict of interests that was not investigated in Scotland. Is there such a conflict?

Superintendent Iain Murray (Police Scotland): I must be honest and say that I cannot agree with that. Ultimately, my primary function is casualty reduction and road safety. Therefore, that is the primary focus when we consider any impact or collision that occurs on the roads. There were a few collisions over the weekend, and people are sitting down and going through each of those this morning.

The standard police approach in any scenario—be it a crime or an event occurring on the road network—is always victim, offender, location. When we come to a location, we always try to work out why an event occurred there and consider issues such as the nature of the road, the presiding factors at the time of the event, who was involved and whether they are the victim or the culpable party, in situations in which there is an element of culpability. We do that in conjunction with others—we do not profess to be experts in everything.

Right from the early stages, we involve the local authorities that maintain the road network or the trunk road operating authorities; the vehicle inspectorate, if technical aspects of the vehicles are involved; and the Health and Safety Executive, if the event involved someone driving in the course of their employment. We engage in that work early on to find out information about all the aspects. We do not come at it from one particular perspective; we try to gather all the evidence to ensure that we understand exactly what occurred and, where possible, why it occurred. At that point, we work with partners to try to engineer out those

factors or consider other options that are available to us.

Obviously, we work in conjunction with the Crown Office from the point at which the fatal collision notification is given, and we seek direction at that point, as we want to receive advice from an independent person who is totally removed from the incident.

Stephen McGowan: I do not accept that there is a conflict of interest. I do not accept that our primary focus is on blame and criminality and that there is a later, secondary focus on other issues. In practice, criminal proceedings—if there are any—have to happen first. Again, that is to do with the fairness of the trial. The evidence that might come out at a fatal accident inquiry or thereafter in any other forum in relation to road safety is likely to be the same evidence that would come out during the trial, which means that the trial needs to come first. As I said, it would be wrong to characterise the situation as involving a primary function and a secondary function.

David Green: In recent times, we have had fatal accident inquiries in relation to large numbers of issues that have caused or been part of the cause of road traffic accidents, but which are not necessarily criminal issues. They involve factors such as road layout, bridge parapet construction, vehicle construction and use, the servicing of vehicles and hydraulic oil spills. It is not correct to say that our focus is solely or mostly on prosecution, although, as my colleague has advised, that is the first issue that we need to address. However, thereafter, we consider all the issues. If there is a proper and appropriate need for an FAI into any of those matters, we apply to the courts to have such an inquiry.

Margaret Dekker: The holding of an FAI in the case of a road traffic fatality is at the discretion of the Lord Advocate. An FAI is mandatory only if the driver, cyclist or motorcyclist was killed in the course of their employment. An investigation by a multidisciplinary road collision investigation body would not be dissimilar to an FAI in the sense that it would establish the cause of death, the precautions that should have been taken and the defects in the system. An FAI might last four or five days and cost a lot of money, whereas the multidisciplinary road collision investigation body would consider findings and produce a report that is a public document, unlike an FAI determination. The recommendations in an FAI are not binding. That was highlighted in Lord Cullen's recommendations in his 2009 report of his review of fatal accident inquiry legislation.

The Convener: Does anyone else want to comment? I am thinking with my lawyer's hat on. Someone who is much more fresh to the issue might have something else to say.

Stephen McGowan: Of course, fatal accident inquiry report findings are not binding. However, a fatal accident inquiry judgment and determination by a sheriff is a public determination. I understand that the Scottish Court Service and the judiciary of Scotland publish all such determinations on their websites. They are certainly available to all parties who are involved in cases, but I think that they are all now published as well. There is therefore a public document from a fatal accident inquiry.

The Convener: Mrs Dekker, are you suggesting that there should be an FAI into every fatal road accident?

Margaret Dekker: No. The suggestion of a multidisciplinary road collision investigation body was secondary to the research. We do not suggest that there should be an FAI for every fatal road accident, but there is merit in a multidisciplinary road collision investigation body looking at all casualties. That would also be helpful for the Government's road strategy to 2020.

Superintendent Murray: I agree with the point about taking a multidisciplinary approach, but I would argue that that is what we do just now when we engage with others. This morning, for example, police will be standing with the relevant local authorities at the scenes of incidents that took place over the weekend to assess the issues at those locations. We work back from such assessments. We engage with other bodies and agencies that have an interest or locus in the situations that we deal with.

Graeme Pearson: In the round, without going into all the detail of the statistics, how dangerous are the roads in Scotland compared with roads elsewhere in Europe?

Superintendent Murray: I must be honest and say that I would struggle to give you facts about Europe. Thankfully, we are seeing a steady decline in the number of road deaths here. There have been a number of reasons for that over the years. However, we are certainly well on track for the 2015 and 2020 targets.

Stuart Cross: The point about conflicts of interest was not a principal, driving reason for the recommendation to create a multidisciplinary body. If adherence to the recommendations in the European Council directive is being achieved through the mechanisms suggested by my colleagues, that is to be applauded.

Another strong reason for recommending the creation of an independent body is the experience of other countries, particularly Sweden, which has been tracking progress towards a 2020 road safety target for a considerable number of years. We refer to some of the evidence from Sweden in our report. As part of their annual progress reports, the Swedes refer to the contribution made

by an independent, multidisciplinary body. They track not only compliance in relation to achieving the 2020 target, but the effectiveness of an independent body in contributing to that.

The Convener: Roderick Campbell, Jenny Marra, Alison McInnes and Sandra White have supplementary questions.

Roderick Campbell (North East Fife) (SNP): Good morning. Mr Cross, I heard what you said about the European Transport Safety Council, and I take account of what you said about the focus of your report not being on conflicts of interest. However, when you talked about the ETSC, I think that you referred to vested interests. What vested interests are there in the present system, if any?

Stuart Cross: I am not sure that I used the phrase "vested interests".

Roderick Campbell: You did—I wrote it down.

Stuart Cross: If I said that, I should not have done.

Roderick Campbell: It may have come from the ETSC's approach to the issue.

Stuart Cross: In fact, that is the reference, because it is not my language. The phrase is from the commentary in the European documentation, which refers to a "perceived, vested interest". I think that the issue of perception is important. I am not suggesting that there will inevitably be vested interests, but the reference to them used the word "perceived".

Roderick Campbell: So you are not suggesting that there are vested interests in the current set-up.

Stuart Cross: We did not investigate that, so I cannot comment.

Roderick Campbell: Okay. That is fine. I will leave it there.

Jenny Marra: Mrs Dekker, just to clear up the point about the multidisciplinary investigation units that the report proposes, you said that you would like to see those established. However, Iain Murray said that he believes that the current set-up comprises a form of multidisciplinary investigation unit. What are you proposing that is different from what currently happens?

Margaret Dekker: I am not proposing anything—that was a secondary recommendation in the report, and we thought that it was worthy of further investigation. The Scottish Government is committed to a road safety strategy to 2020, and with the establishment of a single police force we felt that the timing was appropriate for ideas to be rolled out and examined further.

Jenny Marra: What elements of your idea about multidisciplinary investigations do not happen at the moment? What improvements do you want in that respect?

Margaret Dekker: We are talking about a public document that would be available to all. The names would be redacted, but I would suggest that the document itself would go into more depth than an FAI and hope that its recommendations would be followed through in the way that Lord Cullen suggested in his 2009 report. The fact is that recommendations as a result of FAIs are not followed through; they might be written down, but very little is done to improve road safety as a result of them. All I can say is that the proposal for a multidisciplinary road collision investigation unit should be considered a bit more.

The Convener: I hear what you say about fatalities in RTAs and the various disciplines, including the fire service, that unfortunately have to attend them. I take it that, in cases where there is going to be no FAI, you still want something to be published.

Margaret Dekker: Absolutely. We want a publication for every casualty, of which there were about 13,500 in Scotland in 2010.

The Convener: Could that be done with names being redacted to protect people?

Margaret Dekker: Absolutely.

The Convener: My question was for Mr Murray, Mrs Dekker, but I acknowledge what you are looking for. In cases where there is no FAI, you still want people to know what happened in order to improve road safety.

Superintendent Murray: The full product, including the report itself, statements, collision investigators' reports, photographs and so on, is handed over for investigation by the Crown Office. Anything that we have learned is already included in that documentation.

Stephen McGowan: What happens with such reports is that each year the Scottish Government produces a statistical return to draw out some of the themes from road traffic deaths. As for the suggestion that each report be published, our experience is that for understandable reasons some families do not want to see the full circumstances of their loved one's death; of course, many do, and we try to facilitate that where we can.

I am not sure whether publishing the full collision report would be of any use. However, what might be of use are the themes that might emerge and, as I understand it, they are published in a Scottish Government bulletin that draws out the generics of each accident and the lessons that can be learned.

The Convener: Did you know about that?

Margaret Dekker: Yes, but those are statistics and we want to go a bit further than that. If families want the information to aid the grieving process, it should be given to them.

The Convener: But do you accept that some families do not want to know?

Margaret Dekker: Absolutely. Some families might want something very brief while others might want very detailed information. However, they, not the authorities, should decide the sort of information that they get.

The Convener: I might have misunderstood. I see your point about making the information available for individual events, but I thought that you were talking generally about how we improve road safety as a consequence of fatal accidents where there has been no FAI, criminal proceedings or whatever. I think that that is what Mr McGowan was talking about when he referred to what he called themes.

Stephen McGowan: That is right.

The Convener: Can we accept that those are two different things?

Margaret Dekker: Yes.

Superintendent Murray: I should point out that we investigate every collision, not just fatal ones. The location of speed cameras, for example, is based on a rolling three-year analysis of data from every collision to find out what happened where and identify the suitable actions that can be taken. As I have said, that work is carried out with local authorities and trunk road operators to ensure that we start with the location and then work back.

We identify the messages to ensure that local authorities, which have statutory responsibility for the provision of safe roads and road safety education, are aware of the issues, and we tie that into our own campaigns. For example, this month we are targeting motorcyclists—that will be the campaign that Police Scotland focuses on over this month.

Again, it is about data analysis of past collisions and the routes where collisions occur. Analysis goes on to ensure that we target our resources to stop such things happening.

10:30

Margaret Dekker: That is exemplary and I applaud it. Anything that reduces road fatalities and road casualties can only be applauded. However, when the worst-case scenario occurs—when a fatality occurs—it is the victim's family who need to access the information.

The Convener: I will let other members ask questions.

Alison McInnes (North East Scotland) (LD): There seem to be two strands—there is the need for the families themselves to get the information; we are clear about that. Evidence that we have heard on the Victims and Witnesses (Scotland) Bill emphasises how important it is for families to get some sort of closure by understanding everything that has gone on. However, you seem to go further than that in your discussion about the multidisciplinary group—you talked about a public document. I cannot imagine that it would always be in families' best interests for the wider public and the press to know all the details of every accident. I am interested to hear your views on that. Perhaps assurances that action has been taken would be more useful and therefore it would be useful for the discussions between local authorities or Transport Scotland and the police service to be made more public. Can you comment on that?

Margaret Dekker: I think that families would take comfort in measures having been put in place to prevent a similar occurrence in the future, but how are such measures enforced? Recommendations are made, but it is up to local authorities to implement the changes. How can that be enforced? That is a big road safety issue.

Sandra White (Glasgow Kelvin) (SNP): I want to look in the round at the report's four recommendations. We have to an extent discussed the recommendation about establishing a multidisciplinary road collision investigation body. I am not sure whether you are still pushing for that—even when the report cites the examples of the Finnish and Swedish models it says that they have independent investigation bodies which also work with the police.

Of course, we have the SFIU, which was set up in 2010. Can I get further information on that new unit, which was set up after Lord Cullen's recommendations in 2009? Where do we stand on recommendation 1 in the report? Margaret Dekker mentioned that perhaps we do not need to mention a new multidisciplinary body in a recommendation—it was just a comment to do with the bill. Are we still looking for recommendation 1 to be implemented or are we satisfied that the police fulfil that role?

Stuart Cross: Mrs Dekker can comment on that. That recommendation is not the strongest of the four recommendations. The pivotal one is the right to access information. The multidisciplinary body was merely an extraction from European practice about the best way to ensure that information is gathered and made available. It is secondary—in the work that we did—to the

establishment of the right to access information, which was a principal recommendation.

Sandra White: I take your point. It is just that the language is very strong—the report basically reiterates support for such a multidisciplinary agency. I just want to get it right in my mind that we are not pushing that idea now and that it is more to do with information.

Stuart Cross: The recommendation is still there. It is interesting to hear suggestions from others who are giving evidence today that there has been movement towards such a process and behaviour. If the end result of what is happening in Scotland is that we get close to that particular recommendation, we will end up in a virtuous position.

Sandra White: When I was reading the papers and the evidence, I thought that there were two different camps and that I would approach the issue from that angle, but you seem to be coming closer together now as you hear the evidence.

The most important point is that families should get information—as per recommendation 2. I hear from others that information is provided if families wish it, but to ensure that there is a fair trial it is provided afterwards. Is more movement needed on that issue?

Stuart Cross: I think that that is a question for Margaret Dekker.

Margaret Dekker: Although the Crown Office says that families can get information if they wish it, lots of families do not, for lots of reasons, know what information is gathered in the course of an investigation. It is essential that families be told proactively, at the beginning of an investigation, exactly what the investigation documents will contain and that they will, if they so wish, have a legal right to access the documents at a suitable point, whether that is at the end of the investigation or at the end of criminal proceedings.

The Convener: Ah. I am glad that you said, “if they so wish”. It is about a right to obtain on request, rather than a requirement to deliver. That is important. There is a distinction between the Crown being required to provide information and a person having the right to obtain information if they request it—and it is the latter that you seek.

Margaret Dekker: Yes, absolutely. That is crucial.

Sandra White: As I said, other witnesses said that information is provided. Perhaps provision on that could be included in the Victims and Witnesses (Scotland) Bill. Will Mr McGowan, Mr Green or Superintendent Murray say something about that? You said that you had lessons to learn.

Stephen McGowan: I am sure that there are lessons to learn, given what Mrs Dekker said. After a road fatality, the Scottish fatalities investigation unit—David Green’s unit—meets the nearest relatives of the deceased, and we will have an initial meeting to explain what the Procurator Fiscal does, what the Crown’s role is and what material might become available. We provide a map, as it were, of the case and the investigation.

We will have to look at what information we can give, in addition to what we provide in that face-to-face meeting. We must learn from the cases that have been drawn to our attention this morning. I undertake to go away and ensure that we give the information. There is no doubt that there are lessons to be learned from going through individual cases.

John Finnie (Highlands and Islands) (Ind): On the campaign’s objectives, it seems to me that two of the recommendations are being followed in practice. I am reassured by what I have heard from the Crown Office and Procurator Fiscal Service about looking again at the information that is provided.

I have a couple of questions for Superintendent Murray about the purpose of investigation. You do not investigate just for the sake of it; you investigate for a purpose. On the long-term road safety strategy, am I right in saying that in most incidents driver behaviour is the problem, rather than road design, and that your campaigns aim to address driver behaviour?

Superintendent Murray: It is a case of focusing, initially, on the bit of the jigsaw that is ours, given that we work in partnership with others. We investigate all collisions—not just serious ones. There are numerous examples of our identifying issues, even on new roads. For example, there was an issue with standing water on the M80, and the local force—this was prior to day 1 of Police Scotland—identified a number of issues, spoke to the trunk road operator and had a meeting, with the result that an engineering solution was put in place. We work with our partners and we drive the agenda that we identify in order to ensure that our partners are aware of issues. We are the ones who are on the roads 24/7, so we can identify things that partner agencies might not be aware of.

The campaign side of things is the bit that we can influence. For example, we can identify victim groups—I am thinking about vulnerable road users—to see how we can join others in supporting on-going education initiatives, and we can try to influence driver behaviour through high-visibility patrols, ensuring that we are in the right place at the right time and taking appropriate action when we identify offences, whether that

means issuing a warning to a motorist, reporting an offence to the fiscal or taking some other direct measure. That is the bit that is easily owned by us, over which we have the most control.

John Finnie: I represent the Highlands and Islands, where the number of fatalities on the A9 and many rural roads is a major consideration. Will your recommendations on road design manifest themselves in road layout changes, albeit that it might take some time for that to happen?

Superintendent Murray: Yes.

John Finnie: I will move on to another aspect. Again, my question is for Superintendent Murray and it is about the basis on which family liaison officers are appointed and, from the perspective of SCID, how important that initial contact is to setting the scene for the level of disclosure that there will be and the timeframe for it. When are family liaison officers appointed? Is it done only when there has been a fatality?

Superintendent Murray: Someone is appointed primarily when there has been a fatality, but it might also be done for other serious incidents, depending on the nature of the collision. One of the first considerations of the senior investigating officer is identification of the victim and ensuring that we engage with the family at the earliest possible opportunity.

There can be confusion around what Mr Finnie referred to as a “family liaison officer”, or a contact officer or whatever. Forces have used various naming conventions over the years. We all work from the road death investigation manual, which has a chapter on the family liaison strategy. One of the first considerations in the review that my chief inspector does every morning on on-going incidents is about the strategy, and one of the first things to be discussed is family liaison.

As Mrs Dekker rightly says, the family is the victim in such circumstances, so right from the off we need to ensure that we are delivering a service and keeping the family updated about where we are and what we are doing. We also need to obtain information from the family, which can be a delicate balance to strike for the individuals who are involved.

We now have a different structure for how we tackle such cases, and it will become more standard. No doubt there has been confusion over the years because different forces have referred in different ways to the same principles from the same manual, although the principles of the role of family liaison have been the same. Those differences will now disappear and there will be clarity about what we are doing. There is now a single standard operating procedure that will make everything clearer.

John Finnie: Even though different terminology might have been employed in different forces, was the practice the same or were practices different, but will now be standardised?

Superintendent Murray: I could not honestly say. Forces' practices should all have been the same. The training was all the same and it was delivered in the same place at the same time at the Scottish Police College, so all those who fulfil the SIO role should have been engaging in the same strategy at the same time in the same way. I assure you that that is what happens now.

John Finnie: Thank you.

I have a question for the Crown Office. Mrs Dekker referred to the former Northern Constabulary charging a fee, but that has been resolved and the fee has been waived. Can you confirm that?

Stephen McGowan: As I understand it, the situation was resolved by the old Northern Constabulary. We have to look at the information that is given, but had the family come to the Crown Office and Procurator Fiscal Service we would have provided the documents free; there would have been no charge and it would have been part of the service that we provide. We need to look at why the family felt that they required to go to the police for those documents.

Margaret Dekker: I am pleased to hear that the Crown Office recognises that information should be proactively given to families at the beginning so that they do not have to go through a freedom of information request or to the police to get the information that they seek.

The Convener: Were all the FOI requests submitted because people had to use them or did they use that process as a first resort? I do not know the answer; I am just asking.

Margaret Dekker: I think that FOI requests were used because people did not know where to go for the information. At such vulnerable times in their lives, families do not even remember their names and it is difficult for people to absorb information. That is why it is so important that they are told the information that they need, and that it be given in written form so that they can take it away and read it later.

The Convener: I was just looking for clarification. People might not have been refused the information but they might just have thought that an FOI request was the way to get it.

Margaret Dekker: If people do not know what information is being gathered, they will not know what to ask for.

The Convener: Thank you; that has cleared that up.

We will hear from Colin Keir now. He has been very patient. He will be followed by Graeme Pearson, who is never as patient as you, Colin.

10:45

Colin Keir (Edinburgh Western) (SNP): It would be interesting to find out whether the procedures that Mr Murray among others described—the things that happen just after a fatality takes place—were followed in the instances that you have outlined.

My question is about what information should be given. Some reports can be incredibly raw, to put it mildly. Anyone who has seen one will know that people might not really want them out in the ether, if you like. Are you saying that you are looking for the original documentation, warts and all, which can be dramatic, to be offered to the family—that might depend on the strength of the family—or are you talking about an edited version?

Margaret Dekker: I think it is up to the family to choose what depth of information they require. It is their loss.

David Green: It might be helpful if I explain what happens when we start to investigate a road traffic fatality—or any other fatality, for that matter.

We gather information from the police report, the collision investigator's report and any other information that the police supplied. We ask them to make further inquiries if we think that there are particular areas that need to be looked into. Once we have in-gathered all those papers, it is our practice to then ask the nearest relatives to come in for an interview to discuss what has happened. At that interview they should be shown some of the material, if it can be shown at that stage. It should be explained to them what information we have and what we propose to do. Following that, we report to the Crown Office detailing whether we feel that a prosecution is appropriate, whether there should be an FAI or whether the case should be closed. The family should be told about those things at that stage.

It is absolutely right to say that some of the material can be incredibly distressing and very sensitive, but our guidance makes it perfectly clear that if it is requested and if the families wish to have it, they get it unedited.

We have processes in place to minimise the difficulties that might result from that. In particular, we send post-mortem reports and occasionally books of photographs—if they are particularly distressing—out to general practitioners with whom we have an arrangement and who can explain the technical medical aspects to the next of kin if that is required, and provide any other support that the nearest relatives might wish.

There are processes in place to explain the information.

We explain to relatives that some material can be very distressing and difficult and we try to do that sensitively, so that people understand that they might see things that will be hard for them. We take the view—this is quite clear in our guidance—that if the nearest relatives wish to have the information, they will get it.

Margaret Dekker: One family recently requested a post-mortem report, which I believe is available at any time during the investigation, and they were told that it was too distressing and that it was evidence. We told the family to request that the report be sent to the family doctor. It really should not be up to families to be proactive in that respect. I reiterate that such families are going through a traumatic time. They have to be told proactively what information they can get; it should not be at the discretion of fiscals.

David Green: I reiterate that our guidance makes it clear that families should be told proactively and be made aware of what information we have, what they may ask for and what they will be given should they ask. It has to be said that a great number of nearest relatives do not wish to see the information; they are happy to have a meeting and to have matters explained to them, but they do not wish to see photographs, the collision investigator's report or the post-mortem report, because they are very distressing.

The Convener: I do not wish you to name anybody, Mrs Dekker, but I think that it would be useful if the party that you mentioned were to contact Mr Green's office if there has been some kind of difference.

David Green: Margaret Dekker has contact numbers and an email address for me. I have an additional more direct telephone number that I will give her. I make it clear that on any occasion if there is an issue I am more than happy to hear directly from her.

Margaret Dekker: That is welcome, but it should not be up to voluntary bodies such as us to take that up. The guidelines should be there and they should be proactively given, and families should have a legal right to get the investigation documents if they so wish.

The Convener: I appreciate that but, in the case that has been mentioned, if there has been a flaw in the process, Mr Green should be made aware of it. It is a matter of discretion for the parties that you know about and that Mr Green may know about. We are talking about the generalities as well, but you should tell Mr Green's office about the particular case.

Colin Keir: I have serious difficulties with raw data being sent to people. The idea of sending data to a GP is a lot more sensible. Ms Dekker spoke about information that has already been given to the close family of the deceased and said that the family might be unable to think straight, and be a bit confused and unable to remember. Do you agree that handing over that type of documentation to someone who is in that type of mental place, if you like, might do an awful lot more harm than good, because the person would simply not understand what they were asking for?

Margaret Dekker: You are presuming that families would look for information immediately after a death. Some cases take three years to get to court and during that time families do not have the details that they are looking for. After a period they would be looking for investigation documents, although at what time in a family's grieving period they might want them I cannot say. We are not suggesting that documents be given immediately, but that families should be told proactively what information they can get and that they can access that information when they wish, if they wish.

Graeme Pearson: I want to cover two points—the first fairly briefly and the second in a bit more depth, I hope. The first is about right to access if requested. The key point is the right to know that one has a right to access. I know that Mr Green would be ready to engage with victims and explain things, but is there a system whereby victims and families could be given a sheet that outlines the documents that can be included in their case and a summary of when access might be arranged if they wish it? Such a sheet would mean that families had a document in their file that they could read when they had the time, patience and ability to do so.

Secondly, given that we now have a single police force and a Crown Office and Procurator Fiscal Service, if an FOI request comes in in such circumstances, could a flagging system be engaged that would warn both authorities that something is going wrong? It seems to be ridiculous that a family have been told that they need to pay £500 to get information in such circumstances.

Stephen McGowan: I think that we could do that with FOI requests.

Families do get material, although it does not say as specifically as you have outlined what their rights are. It could. We can take that idea away from today and provide that information, so that we are much more specific. That would add a degree of transparency to the process.

Graeme Pearson: From your point of view, Ms Dekker, would it help if there was a clear

document that would explain at an early stage what a family had a right to ask for, if they wished?

Margaret Dekker: Yes. Brake, in conjunction with the Scottish Government, has produced a pack. How can a family read a pack?

Graeme Pearson: It should be a brief document.

Margaret Dekker: In the pack, lots of things are stated that should happen, but they do not happen. As you said, it is very important that families know what information they have the right to gather.

Graeme Pearson: A more substantial point relates to road traffic accidents in which a police officer is involved, which can give rise to conflict. Thankfully, very few such accidents involve fatalities, but over a year there are many such accidents in which injuries occur. Unfortunately, on some occasions, there are fatalities. One such case has been raised with me, the handling of which has caused real angst among the family and relatives concerned. Are there ways in which the handling of such accidents could be improved? Could some form of impartiality be incorporated to remove any fear of a conflict of interest?

Stephen McGowan: Such cases will now be investigated by the Police Investigations and Review Commissioner. In the past, police officers from an external force would have been brought in to investigate a fatal accident involving a police officer, on behalf of the procurator fiscal. From 1 April, when the new legislation came into force, the PIRC took over investigation of incidents involving police officers in which there has been a fatal accident or a serious injury. The commissioner will now, on behalf of the procurator fiscal, investigate whether there has been a crime. Such investigations now being carried out by the independent commissioner under the guidance of the Lord Advocate and the procurator fiscal, who are also independent, means that the landscape is different from the one that existed before 1 April.

Graeme Pearson: At what point in the process would the PIRC become involved in an investigation? Let us say that the accident happens at 11.30 on a Saturday evening. When would the PIRC turn up?

Stephen McGowan: If it was a fatal accident or a serious accident, the PIRC would become involved almost straight away. The on-call road traffic senior investigating officer should immediately make contact with the on-call procurator fiscal from the SFIU, and with the on-call PIRC duty investigator. A discussion would take place, at which point arrangements would be made for the PIRC to come in and carry out the investigation.

Graeme Pearson: Does Superintendent Murray want to say more about that?

Superintendent Murray: No—other than to reiterate that there is now a 24/7 service through the PIRC. The individuals who carry out investigations have the power to direct resource and in investigations they are given the full powers of a constable. At that point, we would be assisting a body as directed, as opposed to leading the investigation.

Graeme Pearson: From your point of view, is that an improvement on what happened previously? Mr McGowan said that the landscape has changed. I presume that his viewpoint would be that it has changed for the better. What is your view?

Superintendent Murray: I must be honest and say that I was content with what was done previously, but the new arrangements give me no cause for concern. I am content that, ultimately, a quicker response might be provided. From an infrastructure perspective, there are significant concerns that there is sometimes undue delay in dealing with a scene. From the point of view of having the resources available to do that, the new arrangements cause me no concern.

Graeme Pearson: I have to say this to you, albeit that it gives me no comfort to do so: you will know that, although you were not concerned about the previous set-up, many families were.

Superintendent Murray: Yes.

Graeme Pearson: You have a duty to try to deal with that concern.

Superintendent Murray: Yes.

Graeme Pearson: In relation to cases that lie unresolved, is there any way in which the authorities can address some of the perceptions and feelings that families have that matters have not been properly investigated?

Stephen McGowan: Are you talking about cases that are—

The Convener: Historical.

Graeme Pearson: Yes—although when we say “historical”, we are talking about incidents that might have happened in the past few years rather than incidents from a decade ago.

Stephen McGowan: You are referring to incidents that took place before 1 April, when the new legislation came into force.

Graeme Pearson: Yes.

Stephen McGowan: There is no formal process for looking at such cases, if that is what you are asking about, but there is the ability, as there is with any potential crime, to have a case reviewed

if it remains unresolved. If representations were made, any evidence could be looked at again, but there is no formal process in place for looking at such cases. Each one would have to be looked at individually.

The Convener: You are referring to the letter from the Crown Office that says that there will be no further proceedings unless other evidence comes to light. That is the standard letter.

Stephen McGowan: Indeed.

11:00

John Finnie: I am sure that Mr Pearson does not want a different category of treatment for drivers of vehicles who happen to be police officers. There is no suggestion of any retrospective application regarding previous accidents, is there?

Stephen McGowan: I am not saying that I or the Lord Advocate will direct the PIRC to carry out any such investigations—absolutely not. As the convener helpfully clarified for me, if there is fresh evidence in relation to any case, whether in the form of a defect in the original investigation or fresh evidence relating to the incident itself, it can be examined. As for which is the appropriate organisation to examine that information, it depends on the nature of the information. It could be a matter for the police, for the review commissioner or whomever. Consideration would be on a case-by-case basis.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): This morning's discussion has rightly focused on the information that is provided to the families of victims of fatal road collisions. Should provision of that information be extended to the families of victims of non-fatal road collisions? Has that been presumed? Do you see a distinction?

Stephen McGowan: In practice, there is a distinction with regard to our level of engagement. I do not see any difference, in principle, regarding the information that could be given to the victim of such a crime after criminal proceedings are completed. Although we have specific guidance on how we deal with fatalities, more general guidance would apply in non-fatal cases. Interested parties—including the victim, of course—would be able to access information such as the collision investigator's report, if it was requested.

Margaret Dekker: Serious injury is only included in dangerous driving offences. Serious injury, loss of limb and brain damage are not included in careless driving offences. That is a reserved matter, but it is one that we are campaigning on.

Stephen McGowan: I do not think that it is specifically right, as a matter of law, that the consequence of the driving does not determine the nature of the offence. It is the nature of the driving that causes an offence to be classified in a particular way—for example, dangerous driving, driving without—

The Convener: One is a criminal matter and one is a civil matter. This is often difficult for people to understand. Someone might be driving without due care and attention and hit a lamppost; they might be driving without due care and attention and hit a lamppost and the person who is standing at that lamppost, who is killed. The nature of the offence is the same, but the consequences are very different.

I want to ask about the Scottish fatalities investigation unit. The difference between life and death can sometimes simply be the emergency ambulance service getting to the location quickly. People can sustain very serious injuries that remain throughout their life. Would it be possible for such very serious accidents to be treated equally seriously—rather than such investigations applying only to accidents in which there has been a fatality? Someone could be on life support for years, or could end up quadriplegic. All kinds of things might happen. It can be because of the medical attention that they received at the time that they did not die. Is there a possibility of an extension to very serious accidents? That is perhaps where John Lamont's question was going.

Stephen McGowan: The fatalities investigation unit's expertise is in relation to the investigation of fatalities, so—

The Convener: It says that in the name.

Stephen McGowan: It does what it says in the name. Other incidents in which someone has been very badly injured would be dealt with by other prosecutors within the COPFS if there was criminality. They would still be dealt with very thoroughly and seriously, but by a different group of prosecutors.

The Convener: Why? The outcome could depend on the medical attention that was given at the scene. An incident could be five minutes away from resulting in a fatality, and could result in something that continues throughout a person's life.

Stephen McGowan: It is a question of where the specialism is. Our specialism has been fatalities. We will be setting up a road fatalities team within the fatalities investigation unit.

At the moment all such cases are dealt with by senior and experienced prosecutors but we will ensure that they are all accredited and have had

some additional training to deal with the slightly different dynamic of and issues that are raised in road traffic trials. We could also look at whether in such incidents, where you might have a section 2 or section 3 offence with very serious injuries, accredited prosecutors will prosecute those trials, given that some of the same issues might arise at trial.

The Convener: Would SCID want families to have the right to information in cases where the injured party or road traffic accident victim might not have been killed but they as near as damn it cannot speak or express themselves any more?

Margaret Dekker: Again, each case is different. It might be that serious injury cases will be dealt with in the civil courts, in which case the families can access information through their solicitor, but the issue should certainly be looked at. The focus in our report was on fatalities, but families might well welcome such a move.

The Convener: I just think that in cases where a person has suffered a brain injury or whatever and is unable to express themselves, there is nothing more than a flicker between their being in that condition and being a fatality. We might be talking about a very narrow range of cases, but the families involved might be in a somewhat worse position.

Margaret Dekker: I know of someone who was seriously injured and, given his quality of life, would have preferred the doctors not to have saved him.

The Convener: I will leave you with that thought. As members have no other questions, I thank the witnesses for their evidence.

Subordinate Legislation

Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2013 (SSI 2013/126)

11:07

The Convener: The next item of business is consideration of three Scottish statutory instruments that are subject to negative procedure. The amendment order, with which the Subordinate Legislation Committee is content, adds a number of organisations to schedule 1 of the Freedom of Information (Scotland) Act 2002 to require them to comply with the act. If members have no comments, are we content to make no recommendation in relation to this amendment order?

Members *indicated agreement.*

Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128)

Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129)

The Convener: The orders will apply increases to pension contribution rates of firefighters who are members of the pension schemes that are set out in each order. The difference in the schemes relates to when a firefighter joined the service.

The Subordinate Legislation Committee has drawn the orders to Parliament's attention on the ground that they were not laid within the required timescale of at least 28 days before they come into force. Although that committee was content with the explanation that was given in the letter from the Scottish ministers to the Presiding Officer, this committee is required under standing orders to consider any letters to the Presiding Officer on the breach of laying requirements. The letter in question can be found on page 9 of paper J/S4/13/14/2.

If members have no comments on the orders or on the letter to the Presiding Officer, are we content to make no recommendation in relation to the two orders?

Members *indicated agreement.*

11:08

Meeting continued in private until 11:20.

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e-format first available
ISBN 978-1-78307-989-6

Revised e-format available
ISBN 978-1-78351-002-3